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No. 81-2281

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

REVOLK TRUCKING CORPORATION and M. MAURICE GRAHAM,
Plaintiffs-Appellants,

v.

NEW YORK SHIPPING ASSOCIATION, INC., et al.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION TO DISMISS APPEAL

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Defendants-Appellees New York Shipping Association, Inc. ("NYSA") and New York Terminal Conference ("NYTC"),[1] pursuant to Rule 16 of the Rules of this Court, move for dismissal of the appeal for lack of jurisdiction and, alternatively, for denial of certiorari since this case is so insubstantial as not to merit review.

Statement of the Case

During the 1940's, truckers hired independent "public loaders" to load trucks on the piers and shipping terminals

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[1] Most of the other defendants-appellees, are members of N.Y.S.A. and N.Y.T.C. The members' interests are being represented before this Court by their associations.

In accordance with Rule 28.1 of the Rules of this Court, it should be noted that the corporate Defendant-Appellee N.Y.S.A. has one subsidiary, Atlantic Cargo Inspection Corporation.

of the Port of New York (A 26).[2] When public loaders were outlawed in 1953 by the Waterfront Commission of New York Harbor, their work was assigned to longshoremen employed by stevedoring and steamship companies (A 27), including the members of NYSA and NYTC. This practice of assigning pierside truckloading work exclusively to longshoremen was approved by the Federal Maritime Commission (A 27). Since the mid-1950's, Plaintiff-Appellant, Rivoli Trucking Corporation has instituted a multitude of unsuccessful actions challenging these practices. Each action was dismissed as unmeritorious.[3] This appeal involves the latest dismissal.[4]

Reason for Dismissing the Appeal

No appeal lies to this Court. None of the statutes cited by plaintiffs-appellants in either their jurisdictional statement or notice of appeal provides a jurisdictional basis for this appeal. Neither 28 U.S.C. § 1253 (A 1a) nor 42 U.S.C. § 2000e-6(b) (JS at 1) is applicable since this case was not entertained by a three-judge district court. Moreover, there is no other conceivable basis for invoking this Court's appellate jurisdiction. No state statute is

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[2] These references are to the pages of Appendix A to the jurisdictional statement. Any reference to the jurisdictional statement will be cited by the designation "JS".

[3] See, *e.g.*, *Rivoli Trucking Corporation* v. *New York Shipping Association*, 167 F. Supp. 940 (S.D.N.Y. 1956) (reh'g denied June 15, 1957); *Rivoli Trucking Corporation* v. *New York Shipping Association*, 167 F. Supp. 943 (S.D.N.Y. 1957); *Rivoli Trucking Corporation* v. *American Export Lines, Inc.*, 167 F. Supp. 937 (E.D.N.Y. 1958); *Rivoli Trucking Corporation* v. *Scanlon*, 162 F. Supp. 53 (E.D.N.Y. 1958); *Rivoli Trucking Corporation* v. *United States*, 221 F. Supp. 532 (S.D.N.Y. 1963).

[4] Ironically, Rivoli commenced its latest action in 1981 although it has not existed as a corporate entity since 1966 (A 51). Plaintiff-Appellant M. Maurice Graham is Rivoli's counsel and former stockholder.

involved which would call 28 U.S.C. § 1254 (2) into play, nor has any federal statute been declared unconstitutional which would trigger 28 U.S.C. § 1252.

Plaintiffs-appellants' other basis for this appeal, 28 U.S.C. § 1254(1) (A 1a), does not relate to appeals. It prescribes the jurisdictional basis for review by certiorari. No exceptional circumstances are present which would warrant conversion of this appeal into a certiorari proceeding under 28 U.S.C. § 2103. There are no important questions of federal law at issue nor any judicial conflicts. Indeed, every court that has entertained any aspect of this litigation has found that plaintiffs-appellants have no valid claim.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed.

Dated: New York, N.Y.
July 12, 1982

Respectfully submitted,

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